

FEDERAL AGENCIES

Comment Letters

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U.S.EPA (CMD)

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street
San Francisco, CA 94105-3901

August 19, 2004

Glen Gould
U.S. Bureau of Reclamation
P.O. Box 61470 - LC - 2011
Boulder City, NV 89006-1470

Subject: Draft Environmental Impact Statement (DEIS) for the Lower Colorado River Multi-Species Conservation Program (CEQ #040277)

Dear Mr. Gould:

The U.S. Environmental Protection Agency (EPA) has reviewed the above-referenced document pursuant to the National Environmental Policy Act (NEPA), Council on Environmental Quality (CEQ) regulations (40 CFR Parts 1500-1508) and Section 309 of the Clean Air Act.

The programmatic DEIS evaluates the impacts of implementing the Lower Colorado River Multi-Species Conservation Program (LCR MSCP) in the planning area from Lake Mead to the Southerly International Boundary with Mexico. EPA is very supportive of the habitat restoration efforts planned by this program, and commends the lead agencies for developing a well-written document that establishes baseline requirements for future individual restoration projects.

EPA-1

Based on our review, we have rated the DEIS as Environmental Concerns - Insufficient Information (EC-2). We have concerns with meeting National Ambient Air Quality Standards (NAAQS) for particulate matter, effects of chemical contaminants on backwater biota, potential impacts of water diversions, and outreach to environmental justice populations. We also suggest additional information be provided on revised NAAQS, future actions required for specific projects, and funding of the MSCP. Please see the enclosed Detailed Comments for a description of these concerns and our recommendations. A *Summary of EPA Rating Definitions* is also enclosed.

EPA-2

Due to the scope of this project, the planning area of the LCR MSCP does not include the entire Colorado River ecosystem, something that is necessary to effectively conserve and restore habitat along the entire river corridor. EPA recommends that as the MSCP is implemented, program participants look for ways to coordinate and integrate with restoration efforts in the Upper Colorado River Basin and in the Colorado River Delta.

EPA-3a

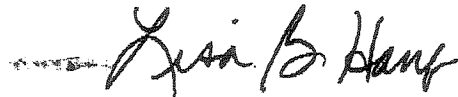
EPA-3b

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We appreciate the opportunity to review this DEIS. When the Final EIS is released for public review, please send one copy to the address above (mail code: CMD-2). If you have any questions, please contact me or David P. Schmidt, the lead reviewer for this project. David can be reached at 415-972-3792 or schmidt.davidp@epa.gov.

EPA-4

Sincerely,



Lisa B. Hanf, Manager
Federal Activities Office
Cross Media Division

Enclosures:

EPA's Detailed Comments
Summary of EPA Rating Definitions

cc: Steve Spangle, U.S. Fish and Wildlife Service
Laura Simonek, The Metropolitan Water District of Southern California

EPA DETAILED COMMENTS ON THE DRAFT ENVIRONMENTAL IMPACT STATEMENT (DEIS) FOR
THE LOWER COLORADO RIVER MULTI-SPECIES HABITAT CONSERVATION PROGRAM (LCR MSCP),
August 19, 2004

Air Quality

The DEIS indicates the proposed action could result in potential short-term, unavoidable air quality impacts resulting from large project development or prescribed burns (Section 3.3.2.1). Fugitive dust emissions and emissions from controlled fires could exceed or contribute to the exceedance of the ambient 24-hour PM10 standard (particulate matter with a diameter of 10 microns or less). The DEIS states that even with implementation of proposed mitigation measures (AQ-1 and AQ-2), the emissions from these large projects may still exceed the established *significance criteria*, i.e., violation of an air quality standard or substantial contribution to an existing or projected air quality violation (p. 3.3-7, Residual Impacts). Having stated this, however, the document also indicates that the lead agencies will ensure that proposed habitat establishment complies with all applicable air regulations (p. 3.3-4, line 22). It is not clear how the lead agencies will ensure compliance if implementation of the proposed mitigation measures may still allow exceedance of the *significance criteria*.

Recommendation: The Final Environmental Impact Statement (FEIS) should address the effectiveness of the proposed mitigation measures to avoid violations or prevent increases of criteria pollutants in non-attainment areas, or indicate the specific actions that will be taken by the lead agencies to assure exceedances of the National Ambient Air Quality Standards (NAAQS) will not occur.

The NAAQS for ozone was revised on July 18, 1997 (62 Federal Register 38856) when EPA promulgated an ozone standard of 0.08 ppm as measured over an 8-hour period. EPA's final rule designating non-attainment areas under the 8-hour NAAQS was published in the Federal Register on April 30, 2004. On that date, EPA announced the designation of Imperial County, California, as a Subpart 2 "Marginal" non-attainment area for the new ozone standard, effective June 15, 2004. EPA intends to revoke the 1-hour ozone standard on June 15, 2005. If the project is approved by Federal agencies before June 15, 2005, and the action commences before that date, then the project will need to meet the conformity requirements for the 1-hour ozone standard at 40 CFR Part 93.150-160.

The fine particulates NAAQS was established on July 18, 1997 (62 FR 38652). Fine particulates are those less than 2.5 micrometers in diameter and are also referred to as PM2.5. The standards include an annual standard set at 15 micrograms per cubic meter (based on the 3-year average of annual mean PM2.5 concentrations) and a 24-hour standard of 65 micrograms per cubic meter (based on the 3-year average of the 98th percentile of 24-hour concentrations). Earlier this year, the State of California and EPA both recommended that portions of Riverside and San Bernadino Counties be designated as PM2.5 non-attainment areas. For Imperial County, EPA recommended that the Imperial Valley be designated as attainment with the PM2.5 standard. EPA expects to make final PM2.5 designations in November of 2004.

EPA-5

EPA-6

Recommendation: The FEIS should discuss the transition from the 1-hour ozone standard to the new 8-hour ozone NAAQS for the areas affected, including revocation of the 1-hour NAAQS. The FEIS should also discuss how the pending designations of the new PM2.5 NAAQS affect the impacted areas such as Imperial, Riverside and San Bernadino Counties. Section 3.3.1 of the document should be revised to reflect these regulatory changes, and provide information on the availability of monitoring data for these two criteria pollutants. Section 3.3.2 should be expanded to address the potential impacts to air quality of implementing the LCR MSCP in these non-attainment areas.

EPA-6 con't

Water Quality

The DEIS discusses how habitat establishment may result in short-term adverse effects from the release of pesticides, salts and various other naturally occurring and man-made chemicals (HYDRO-2 and HYDRO-3, p.3.9-17). The impacts to water quality in the Colorado River are determined to be *less than significant* due to dilution. However, the impacts to fish and other wildlife in the newly created backwaters are not fully addressed. For example, the DEIS acknowledges research that shows selenium levels in biota of the Lower Basin have been found to equal or exceed the guidelines for reproductive impairment of biota (p. 3.9-10), yet there is no evaluation of how selenium levels in isolated backwaters may affect reproduction of the bonytail, humpback chub, or razorback sucker.

EPA-7

Recommendation: The FEIS should discuss the potential impacts to water quality of creating backwaters on lands with naturally high selenium levels or that have been used for agricultural purposes, the implications for species that will reproduce in those waters, and the types of monitoring strategies that will be utilized to adaptively manage those areas.

Water Supply

The DEIS indicates it will take 57,400 acre-feet per year to establish and maintain the 8,132 acres of LCR MSCP conservation areas. Water for the restoration projects would be diverted from other uses, and although the proposed action would not increase the amount of water used in the Lower Basin beyond existing entitlements, the source and current use of the water is not known. Accordingly, based on information in the DEIS, it is not possible at this time to assess the environmental impacts of these water diversions.

EPA-8

Recommendation: The FEIS should discuss the potential impacts of diverting Colorado River water from its current uses to supplying the needs of the MSCP. It should describe how, as each specific project is considered for implementation, the source and current use of that water will be evaluated to assess potential environmental impacts caused by its diversion.

Environmental Justice

The DEIS provides good documentation of low-income and minority populations within the LCR MSCP planning area (Section 3.7). It indicates there is the potential for disproportionate adverse impacts to these populations from short-term air emissions, short-term and long-term noise, and loss of agricultural jobs. We commend the lead agencies for this analysis that clearly states potential impacts on the environmental justice community and describes appropriate mitigation measures to address these impacts.

EPA-9

As stated in the DEIS, one of the purposes of Executive Order 12898 is to encourage the participation of minority and low-income populations in the National Environmental Policy Act (NEPA) process. However, the document provides little information on the actions taken to elicit participation of these populations. For example, neither the DEIS nor the referenced Public Involvement Plan (PIP) found on the Bureau of Reclamation (Bureau) website indicate efforts made to reach the large Hispanic population in the planning area. Such outreach activities could include Spanish versions of major documents, newsletters and summary meeting notes, having a Spanish translator available at public meetings, and holding meetings during the evening when more of the working public would be able to participate.

Finally, it should be noted that the PIP states it is anticipated that the LCR MSCP will not result in disproportionately high and adverse human health or environmental effects on minorities and/or low income populations. This is contradicted by the DEIS.

Recommendations: The FEIS should document the public involvement methods used to communicate with environmental justice communities within the planning area. Assessment of the project's impact on minority and low-income populations should reflect coordination with those populations affected. We also recommend the PIP be updated to reflect the findings of the DEIS, and to provide additional information on outreach to, and involvement of, these populations.

Tribal Resources and Consultation with Tribal Governments

EPA-10

Nearly one third of the land in the MSCP planning area is owned by tribes (p. 2-35, Table 2.1-4). The DEIS provides good information on efforts that have been made to partner with tribes in the development of the LCR MSCP. The Bureau initiated government-to-government consultation with tribes early in the planning process. The Hualapai Tribe has been identified as a cooperating agency based on technical expertise and its jurisdiction over land that may be used for conservation. Representatives of three other tribes (Colorado River Indian Tribes, Chemehuevi Tribe and Cocopah Tribe) are identified as current program participants in the MSCP. The document also acknowledges that implementing conservation measures on tribal land could result in changes to all classes of Indian Trust Assets, and clearly describes a process to cooperatively identify and resolve potential impacts.

Recommendation: EPA commends the lead agencies for their efforts to partner with tribes in the development of the MSCP. We recommend that this cooperation continue and that efforts be made to fully involve all the tribes within the planning area.

EPA-10 con't

Future Actions and Funding

The DEIS references numerous requirements, plans, and activities that must be accomplished prior to the implementation of specific projects under the MSCP. These items include but are not limited to: obtaining appropriate Federal and State permits, conducting a conformity analysis and environmental justice analysis, and development of plans and strategies for environmental monitoring, mitigation, fire suppression, and invasive species.

EPA-11

Recommendation: In order to clarify the responsibilities and obligations of MSCP participants consistent with this programmatic DEIS, EPA recommends that the FEIS include a comprehensive checklist of actions, including permits, plans and other actions that will be required under the MSCP when the decision has been made to implement a specific project.

The DEIS provides very little information on funding that will be committed to implement the MSCP. The LCR MSCP Draft Habitat Conservation Plan (HCP) indicates the 50-year term of the MSCP is estimated to cost \$626 million in 2004 dollars and that Federal and non-Federal participants are currently finalizing cost share negotiations. The results of those negotiations shall be reflected in a Joint Participation Agreement (JPA). The HCP indicates that MSCP participants will also sign an Implementing Agreement that will specify the legal obligations, roles and responsibilities of each signatory. The DEIS provides little information on these issues that are vitally important to the success of the MSCP.

EPA-12

Recommendation: The FEIS should: (1) include a summary of the funding and governance mechanisms of the MSCP, (2) refer to in-depth information on funding and governance that can be found in other documents, (3) provide information on the status of all on-going negotiations, and (4) document any outstanding funding and governance issues that need resolution or agreement among the Federal, state, local and tribal participants of the MSCP.

SUMMARY OF EPA RATING DEFINITIONS

This rating system was developed as a means to summarize EPA's level of concern with a proposed action. The ratings are a combination of alphabetical categories for evaluation of the environmental impacts of the proposal and numerical categories for evaluation of the adequacy of the EIS.

ENVIRONMENTAL IMPACT OF THE ACTION

"LO" (Lack of Objections)

The EPA review has not identified any potential environmental impacts requiring substantive changes to the proposal. The review may have disclosed opportunities for application of mitigation measures that could be accomplished with no more than minor changes to the proposal.

"EC" (Environmental Concerns)

The EPA review has identified environmental impacts that should be avoided in order to fully protect the environment. Corrective measures may require changes to the preferred alternative or application of mitigation measures that can reduce the environmental impact. EPA would like to work with the lead agency to reduce these impacts.

"EO" (Environmental Objections)

The EPA review has identified significant environmental impacts that must be avoided in order to provide adequate protection for the environment. Corrective measures may require substantial changes to the preferred alternative or consideration of some other project alternative (including the no action alternative or a new alternative). EPA intends to work with the lead agency to reduce these impacts.

"EU" (Environmentally Unsatisfactory)

The EPA review has identified adverse environmental impacts that are of sufficient magnitude that they are unsatisfactory from the standpoint of public health or welfare or environmental quality. EPA intends to work with the lead agency to reduce these impacts. If the potentially unsatisfactory impacts are not corrected at the final EIS stage, this proposal will be recommended for referral to the CEQ.

ADEQUACY OF THE IMPACT STATEMENT

"Category 1" (Adequate)

EPA believes the draft EIS adequately sets forth the environmental impact(s) of the preferred alternative and those of the alternatives reasonably available to the project or action. No further analysis or data collection is necessary, but the reviewer may suggest the addition of clarifying language or information.

"Category 2" (Insufficient Information)

The draft EIS does not contain sufficient information for EPA to fully assess environmental impacts that should be avoided in order to fully protect the environment, or the EPA reviewer has identified new reasonably available alternatives that are within the spectrum of alternatives analysed in the draft EIS, which could reduce the environmental impacts of the action. The identified additional information, data, analyses, or discussion should be included in the final EIS.

"Category 3" (Inadequate)

EPA does not believe that the draft EIS adequately assesses potentially significant environmental impacts of the action, or the EPA reviewer has identified new, reasonably available alternatives that are outside of the spectrum of alternatives analysed in the draft EIS, which should be analysed in order to reduce the potentially significant environmental impacts. EPA believes that the identified additional information, data, analyses, or discussions are of such a magnitude that they should have full public review at a draft stage. EPA does not believe that the draft EIS is adequate for the purposes of the NEPA and/or Section 309 review, and thus should be formally revised and made available for public comment in a supplemental or revised draft EIS. On the basis of the potential significant impacts involved, this proposal could be a candidate for referral to the CEQ.

*From EPA Manual 1640, "Policy and Procedures for the Review of Federal Actions Impacting the Environment."



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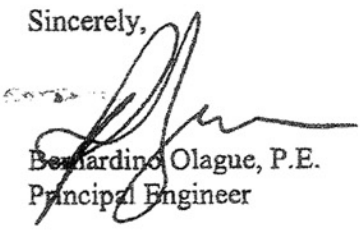
Mr. Glen Gould
U.S. Bureau of Reclamation
P.O. Box 61470 - LC - 2011
Boulder City, NV 89006-1470

Dear Mr. Gould:

The United States Section, International Boundary and Water Commission, has reviewed the documentation on the Lower Colorado River Multi-Species Conservation Program. We appreciate the opportunity to provide the attached comments concerning the environmental document.

If you have any questions, please contact me at (915) 832-4118.

Sincerely,


Bernardino Olague, P.E.
Principal Engineer

Attachment:
As Stated

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